

Landspreading of Small Amounts of NORM As a Disposal Option

Legal Issues Associated With Mississippi Oil and Gas Board Rule 68

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Rule 68: Disposal of Naturally Occurring Radioactive Materials (NORM) Associated with the Exploration and Production of Oil and Gas

- **Original Disposal Methods Available to Operators:**
 - NORM material can be placed between cement plugs.
 - NORM material can be encapsulated in pipe then placed between cement plugs.
 - NORM slurry can be mixed with gel or mud and placed between cement plugs.
 - NORM slurry can be placed into a formation.
 - NORM material can be disposed of offsite at a licensed low level radioactive waste or NORM disposal facility.



PROPOSED AMENDMENTS TO RULE 68

- **Allows the noncommercial surface landspreading of minute amounts of NORM.**
 - “Surface landspreading shall mean the raking or tilling of non-homogenous surface NORM deposits within a discrete land area in order to achieve a homogenous distribution of NORM over the top six inches of soil within that land area.” Rule 68 I(7).
- **Allows the noncommercial subsurface landspreading of minute amounts of NORM.**
 - “Subsurface landspreading shall mean the blending of NORM with clean fill prior to its placement in an impacted area in order to achieve a homogenous distribution of NORM throughout the blended volume. The impacted area is then covered with soil or other materials after placement of the blended volume.” Rule 68 I(8).



SAFEGUARDS BUILT INTO PROPOSED AMENDMENTS

- NORM may only be disposed through landspreading where published literature indicates that the groundwater table is equal to or greater than 5 feet below the bottom of the disposal area. Rule 68(V)(A)(3).
- NORM may not be disposed of by landspreading in areas situated in 25-year flood plains as defined in published literature. Rule 68(V)(A)(4).
- Surveys of the impacted area must be performed to prove ambient exposure rate at any area does not exceed 8 microR per hour above background. Rule 68(VI)(B)(1)(a).
- Subsurface landspreading must be done in 6 inch increments, not to exceed 3 feet of total blended volume. Rule 68(VI)(B)(2)(b).
- A survey of each layer of subsurface landspreading must be performed to prove that the ambient exposure rate does not exceed 8 microR per hour above background prior to any subsequent layers being added. Rule 68 (VI)(B)(2)(c).
- Work exposure for individuals is not to exceed 100 hours per calendar year. Rule 68 (VI)(B)(3).



TRIAL EXPERTS

- **Oil and Gas Industry Experts:**
 - Ms. Carol Berger, Certified Health Physicist.
 - Dr. Tate Thigpen, M.D., and Professor of Oncology at the University of Mississippi Medical Center.
 - Mr. Frank Edwards, Chemical Engineer: groundwater.
- **The Contestants' Experts:**
 - Mr. Clay Kimbrell, Engineer/Geologist.
 - Mr. Doug Upchurch, appraisal “expert.”
 - Dr. Thomas Schrager, Toxicologist.
 - Mr. Stanley Waligora, Certified Health Physicist.
- **Representative of the Mississippi Department of Health:**
 - Mr. Robert Goff.



ADDITIONAL SAFEGUARDS ADDED BY THE MSOGB

- **Prior to commencing landspreading operations, an Operator must first contact the Board for permitting and monitoring. Rule 68(V)(A)(5).**
- **Landspreading is limited to either the site of origin in a reasonable portion of the surface near production operations or on other lands where the Operator owns fee title to the entirety of the surface estate. Rule 68(V)(C)(3).**
- **Strict penalties (fines of up to \$10,000 per day for each day of such violation) are included to ensure compliance with the Rule's provisions. Rule 68(VIII).**



APPELLATE HISTORY

January 24, 2000	The MSOGB filed amended Rule 68 pursuant to Mississippi's Administrative Procedures Act.
February 8, 2000	The Contestants file their Petition for Appeal with the Lincoln County Chancery Clerk.
July 31, 2000	The MSOGB and the Intervenor oil companies file a Motion to Dismiss on procedural grounds.
November 9, 2000	Final Judgment is entered granting the MSOGB's Motion to Dismiss, and the appeal is dismissed on procedural grounds.
March 12, 2003	The Mississippi Court of Appeals reverses the dismissal.
September 14, 2007	Briefing on the merits begins.

APPELLATE HISTORY

September 14, 2007	Briefing on the merits begins.
April 2, 2009	The Special Chancellor enters an Order Dismissing without Prejudice based on the Contestants' failure to prosecute their appeal.
April 6, 2010	The Contestants file their Notice of Appeal.
February 21, 2012	The Mississippi Court of Appeals reverses the dismissal.
May 1, 2012	Supplemental briefing on the merits begins.
May 24, 2012	The Special Chancellor enters an Order affirming the MSOGB's adoption of the amendments to Rule 68 on the merits.

POINTS OF ERROR RAISED BY THE CONTESTANTS/APPELLANTS

1. Whether the MSOGB's promulgation of the amendments to Rule 68 was arbitrary and capricious.
2. Whether the MSOGB violated Mississippi law when it failed to prepare an economic impact statement.
3. Whether the MSOGB exceeded its authority under Miss. Code Ann. § 53-1-17 by amending Rule 68 without the approval of the MCEQ.
4. Whether amended Rule 68 is in contravention of Miss. Code Ann. § 53-3-3 (unlawful disposal of "waste") and federal law (CERCLA, RCRA).
5. Whether the procedures utilized by the MSOGB in promulgating Rule 68 violated the laws of the State of Mississippi, federal law, and/or Contestants' constitutional rights.



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